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LEGISLATIVE ACTS AND OTHER INSTRUMENTS

Subject:	Draft DECISION OF THE EEA JOINT COMMITTEE amending Annex VI (Social Security) to the EEA Agreement

DRAFT

DECISION No …
OF THE EEA JOINT COMMITTEE

of …

amending Annex VI (Social Security) to the EEA Agreement

THE EEA JOINT COMMITTEE,

Having regard to the Agreement on the European Economic Area ("the EEA Agreement"), and in particular Article 98 thereof,

Whereas:

(1) Article 33 of the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community ("Withdrawal Agreement")[1] states that the provisions of Title III of Part Two of the Withdrawal Agreement shall apply to nationals of Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the Swiss Confederation provided that those countries have concluded and apply corresponding agreements with the United Kingdom of Great Britain and Northern Ireland, which apply to Union citizens, as well as with the European Union, which apply to the United Kingdom nationals.

(2) Article 32 of the Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union ("Separation Agreement")[2] states that the provisions of Title III of Part Two of the Separation Agreement shall apply to Union citizens provided that the Union has concluded and applies corresponding agreements with the United Kingdom of Great Britain and Northern Ireland which apply to nationals of the EEA EFTA States, as well as with the EEA EFTA States which apply to United Kingdom nationals.

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1 OJ L 29, 31.1.2020, p. 7.
2 Signed in London on 28 January 2020.

(3) It is necessary to provide reciprocal protection of social security rights for United Kingdom nationals, as well as their family members and survivors, who, by the end of the transition period, are or have been in a cross-border situation involving one or more of the Contracting Parties to the EEA Agreement and the United Kingdom of Great Britain and Northern Ireland at the same time.

(4) Annex VI to the EEA Agreement should therefore be amended accordingly,

HAS ADOPTED THIS DECISION:

Article 1

The following Chapter is inserted after Chapter II of Annex VI to the EEA Agreement:

'III. UNITED KINGDOM NATIONALS

ARTICLE 1

Definitions and references

1. For the purposes of this Chapter the following definitions shall apply:

(a) "Withdrawal Agreement" means the Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community[1];

(b) "Separation Agreement" means Agreement on arrangements between Iceland, the Principality of Liechtenstein, the Kingdom of Norway and the United Kingdom of Great Britain and Northern Ireland following the withdrawal of the United Kingdom from the European Union, the EEA Agreement and other agreements applicable between the United Kingdom and the EEA EFTA States by virtue of the United Kingdom's membership of the European Union[2];

(c) "States covered" means the States that are Contracting Parties to the EEA Agreement;

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1 OJ L 29, 31.1.2020, p. 7.
2 Signed in London on 28 January 2020.

(d) "transition period" means the transition period referred to in Article 126 of the Withdrawal Agreement;

(e) the definitions in Article 1 of Regulation (EC) No 883/2004[1] and Article 1 of Regulation (EC) No 987/2009[2].

2. For the purposes of this Chapter, all references to Member States and competent authorities of Member States in provisions of Union law made applicable by this Chapter shall be understood as including the United Kingdom and its competent authorities.

ARTICLE 2

Persons covered

1. This Chapter shall apply to the following persons:

(a) United Kingdom nationals who are subject to the legislation of one of the States covered at the end of the transition period, as well as their family members and survivors;

(b) United Kingdom nationals who reside in one of the States covered, and are subject to the legislation of the United Kingdom at the end of the transition period, as well as their family members and survivors;

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[1] Regulation (EC) No 883/2004 of the European Parliament and of the Council of 29 April 2004 on the coordination of social security systems (OJ L 166, 30.4.2004, p. 1).

[2] Regulation (EC) No 987/2009 of the European Parliament and of the Council of 16 September 2009 laying down the procedure for implementing Regulation (EC) No 883/2004 on the coordination of social security systems (OJ L 284, 30.10.2009, p. 1).

(c) persons who do not fall within points (a) or (b) but are United Kingdom nationals who pursue an activity as an employed or self-employed person in one or more of the States covered at the end of the transition period, and who, based on Title II of Regulation (EC) No 883/2004, are subject to the legislation of the United Kingdom, as well as their family members and survivors;

(d) stateless persons and refugees, residing in one of the States covered or in the United Kingdom, who are in one of the situations described in points (a) to (c), as well as their family members and survivors.

2. The persons referred to in paragraph 1 shall be covered for as long as they continue without interruption to be in one of the situations set out in that paragraph involving both one of the States covered and the United Kingdom at the same time.

3. This Chapter shall also apply to United Kingdom nationals who do not, or who no longer, fall within one of the situations set out in paragraph 1 of this Article but who fall within Article 10 of the Withdrawal Agreement or within Article 9 of the Separation Agreement, as well as their family members and survivors.

4. The persons referred to in paragraph 3 shall be covered for as long as they continue to have a right to reside in one of the States covered under Article 13 of the Withdrawal Agreement or Article 12 of the Separation Agreement, or a right to work in their State of work under Article 24 or 25 of the Withdrawal Agreement or Articles 23 and 24 of the Separation Agreement.

5. Where this Article refers to family members and survivors, those persons shall be covered by this Chapter only to the extent that they derive rights and obligations in that capacity under Regulation (EC) No 883/2004.

ARTICLE 3

Social security coordination rules

1. The rules and objectives set out in Article 29 of the EEA Agreement, Regulation (EC) No 883/2004 and Regulation (EC) No 987/2009 of the European Parliament and of the Council shall apply to the persons covered by this Chapter.

2. The Union shall take due account of the Decisions and Recommendations of the Administrative Commission for the Coordination of Social Security Systems attached to the European Commission, set up under Regulation (EC) No 883/2004 ("Administrative Commission") listed in Part I of Annex I to the Withdrawal Agreement. The EFTA States shall take due account of Decisions of the Administrative Commission and take note of Recommendations of the Administrative Commission listed in Part I of Annex I to the Separation Agreement.

ARTICLE 4

Special situations covered

1. The following rules shall apply in the following situations to the extent set out in this Article, insofar as they relate to persons not or no longer covered by Article 2:

(a) United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who have been subject to the legislation of one of the States covered before the end of the transition period, as well as their family members and survivors shall be covered by this Chapter for the purposes of reliance on and aggregation of periods of insurance, employment, self-employment or residence, including rights and obligations deriving from such periods in accordance with Regulation (EC) No 883/2004; for the purposes of the aggregation of periods, periods completed both before and after the end of the transition period shall be taken into account in accordance with Regulation (EC) No 883/2004;

(b) the rules set out in Articles 20 and 27 of Regulation (EC) No 883/2004 shall continue to apply to United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who, before the end of the transition period, had requested authorisation to receive a course of planned health care treatment pursuant to Regulation (EC) No 883/2004, until the end of the treatment. The corresponding reimbursement procedures shall also apply even after the treatment ends. Such persons and the accompanying persons shall enjoy the right to enter and exit the State of treatment in accordance with Article 14 of the Withdrawal Agreement *mutatis mutandis* and with Article 13 of the Separation Agreement *mutatis mutandis*;

(c) the rules set out in Articles 19 and 27 of Regulation (EC) No 883/2004 shall continue to apply to United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who are covered by Regulation (EC) No 883/2004 and who are on a stay at the end of the transition period in one of the States covered or in the United Kingdom until the end of their stay. The corresponding reimbursement procedures shall also apply even after the stay or treatment ends;

(d) the rules set out in Articles 67, 68 and 69 of Regulation (EC) No 883/2004 shall continue to apply, for as long as the conditions are fulfilled, to awards of family benefits to which there is entitlement at the end of the transition period for United Kingdom nationals, as well as stateless persons and refugees residing in the United Kingdom who are subject to the legislation of the United Kingdom and have family members residing in one of the States covered at the end of the transition period;

(e) in the situations set out in point (d) of this paragraph, for any persons who have rights as family members at the end of the transition period under Regulation (EC) No 883/2004, such as derived rights for sickness benefits in kind, that Regulation and the corresponding provisions of Regulation (EC) No 987/2009 shall continue to apply for as long as the conditions provided therein are fulfilled.

2. The provisions of Chapter 1 of Title III of Regulation (EC) No 883/2004 as regards sickness benefits shall apply to persons receiving benefits under point (a) of paragraph 1 of this Article.

This paragraph shall apply *mutatis mutandis* as regards family benefits based on Articles 67, 68 and 69 of Regulation (EC) No 883/2004.

ARTICLE 5

Reimbursement, recovery and offsetting

The provisions of Regulations (EC) No 883/2004 and (EC) No 987/2009 on reimbursement, recovery and offsetting shall continue to apply in relation to events, in so far as they relate to persons not covered by Article 2, that:

(a) occurred before the end of the transition period; or

(b) occur after the end of the transition period and relate to persons who were covered by Articles 2 or 4 when the event occurred.

ARTICLE 6

Development of law and adaptations

1. Notwithstanding paragraph 3, references in this Chapter to Regulations (EC) No 883/2004 and (EC) No 987/2009 or provisions thereof, shall be understood as references to the acts or provisions as incorporated into the EEA Agreement, including as amended or replaced, as applicable on the last day of the transition period.

2. Where Regulations (EC) No 883/2004 and (EC) No 987/2009 are amended or replaced after the end of the transition period, references to those Regulations in this Chapter shall be understood as referring to those Regulations as amended or replaced, in accordance with the acts listed in Part II of Annex I to the Withdrawal Agreement, as regards the Union, and Part II of Annex I to the Separation Agreement, as regards the EFTA States.

3. Regulations (EC) No 883/2004 and (EC) No 987/2009 shall, for the purposes of this Chapter, be understood as comprising the adaptations listed in Part III of Annex I to the Withdrawal Agreement, as regards the Union, and Part III of Annex I of the Separation Agreement, as regards the EFTA States.

4. For the purposes of this Chapter, the amendments and adaptations referred to in paragraphs 2 and 3 shall take effect on the day following the day on which the corresponding amendments and adaptations of Annex I to the Withdrawal Agreement or of Annex I to the Separation Agreement take effect, whichever is the latest.'

Article 2

This Decision shall enter into force on …, or on the day following the last notification to the EEA Joint Committee under Article 103(1) of the EEA Agreement, whichever is the later.

It shall apply from the end of the transition period.

Article 3

This Decision shall be published in the EEA Section of, and in the EEA Supplement to, the *Official Journal of the European Union*.

Done at Brussels,

For the EEA Joint Committee
The President

The Secretaries
to the EEA Joint Committee